1942. K File No. O. Patent & Designs 42

Legal DEPARTMENT

A BRANCH

p 51E

Subject:—

Opinions under the Indian Patents and Designs Act, 1911.

CONTENTS.

Legal Department File No. O.Patent & Designs /42

Sr. No.	Compilation No.	Subject.	Page.
1	O.N. 7121 2/9/42.	Indian Patents and Designs Act 1911--- section 22--- Grant of licence for t. e manufacture of certain drugs---Whether the Central Government can refer the petition to any High Court.	1-5

RGM. 3/5
SC.

SWM 28/5

MMM 28/5

CONTENTS.

Legal Department File No. O.Patent & Designs /42

Sr. No.	Compilation No.	Subject.	Page.
1	O.N. 7121 2/9/42.	Indian Patents and Designs Act 1911--- section 22--- Grant of licence for the manufacture of certain drugs---Whether the Central Government can refer the petition to any High Court.	1-5

RSM. 3/5
SC.

SWA 28/5

MSM 28/5

Submitted.

On 20-6-1941, the Govt. of Bombay forwarded to the Controller of Patents and Designs, Calcutta, a petition from the Director, Haffkine Institute, Bombay, for the grant under sec.22 of the Indian Patents and Designs Act, 1911, of a compulsory licence for the manufacture at the Haffikine Institute of the drug "Sulphathiazol" which is patented by Messrs. May and Baker and requested that the petition may be transmitted to the Central Govt. Another letter in the same connection was addressed by this Govt. to the G. of I. on 3.7.41 requesting the G.of I. to grant a compulsory licence to the Director, Haffkine Institute, as requested inthe petition. The Central Govt. considered the petition, but before proceeding further, they inquired whether the parties concerned were able to come to an agreement between themselves. From the G. Of I. (Deptt. of Commerce) letter dated 28.5.42, it appears that the Patentees filed a statement of their case in which they agreed to the grant of a licence subject to certain corditions. The Central Govt. therefore, desired to have the views of the Bombay Govt. as regards terms of royalty and the conditions stipulated by the Patentees. Though it is not clear, presuambly the Director, Haffkine Institute, informed the G.ofI. in terms of the reply approved by the Bombay Govt.

2. It appears that under sec. 22(2) of the Indian Patents and Designs Act, 1911, the Central Govt. referred the petition to the High Court of Calcutta for its decision on 1.8.42 and copies of the letter addressed to the Registrar, High Court, Calcutta, have been forwarded to the parties concerned. In express letter No.4002/33, dated 7.8.42, the Govt. of Bombay requested the Central to refer the question to the High Court, Bombay,

Bombay, on the grounds mentioned therein. The G. of I, however, state that they would investigate the possibility of making reference to another High Court(Bombay) if the petitioner can obtain the consent of the opposite party i.e. Messrs. May and Baker, limited, to such transfer.

3) The B.D. office wishes to know whether it is possible to ask for transfer of the case on the grounds stated in the express letter dated 7-8-42 at P. 242 ante.

4. It appears that headquarters of May and Baker (India) have been shifted to Bombay. But from the letter of the G. of I. it appears that the Patentees are not May & Baker(India), but May & Baker Ltd. whose address for service in India is "c/o Messrs. Deponning and DePennig, 10 Govt. Place, East Calcutt,." If as the Govt. of India State, May & Baker, Ltd. are a party to the reference it will be necessary for the Director to obtain their consent for the transfer of the case to the High Court, Bombay. Ground (2) in the express letter cannot be available of as a valid ground for transfer of the case to High Court, Bombay.

Id/- E.P.B.

A.S.

The words "a High Court for decision" in sub-section (2) of section 22 of the Patents and Designs Act, 1911, clearly indicate that it is entirely within the discretion of the Central Government to refer the petition to any High Court in British India for decision,. In the absence of any provision either in the Act or the rules therefunder it appears that once the petition is referred to a certain High Court for decision, it would not be competent for the Central Government either to withdraw it or to transfer it to another High Court without the consent of both the parties. In the present case the reference is already made by the Central Government to the Calcutta High Court,

and the consent of the opponents for the transfer of it the Bombay Court is not forth-coming. Assuming that mutual convenience would be a valid ground for transfer, it appears that the Government of Bombay has not made out any such case. It appears that the Government of Bombay is under the impression that Messrs. May and Baker (India) Ltd. whose agents have shifted their headquarters from calcutta to Bombay are the opponents in the present case, but as pointed out by the Government of India in their letter at a p.249 ante that impression is not correct . In the circumstances it does not appear legally feasible to get the reference transferred to the Bombay High Court.

Id/- R.T.K.
29/8

A.L.R.

Reply may be:-

It seems legally possible for the Government of India to make a further reference to another High Court on the grounds noted in G.D.Express ~~x~~ letter dated 7.8.42, provided the opposite party ~~x~~ has its headquarters in Bombay and its consent is obtained . From the Government of India letter at p. 249 of this file, these appears to be some doubt about the identity addresses of the opposite party.

Id/- P.S.H.
31/8

R.L.A.

Id/- P.N.M.
1/9

PSM. 3/5
4C

Office of the R.L.A.

It seems legally possible forthe Government of India to make a further reference to another High Court on the grounds noted in G.D.'s Express Letter dated 7th August 1942, provided the opposite party has its headquarters in Bombay and its consent is obtained. From the Government of India letter at p. 249 of this file, there appears to be some doubt about the identity and address of the opposite party.

Id/- P.N.M.
1/9

Remembrancer of Legal Affairs.

U.R.to G.D.,No. 7121, dated the 2nd September 1942

PSM. 3/5
4C.